

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also: Part 1, § 355)

Rev. Proc. 2009-25

SECTION 1. PURPOSE

This revenue procedure describes a new pilot program for letter rulings for certain transactions under the jurisdiction of the Associate Chief Counsel (Corporate). The new program does not diminish the availability of letter rulings under existing programs.

SECTION 2. CHANGES

This revenue procedure amplifies Rev. Proc. 2009-1, 2009-1 I.R.B. 1, which explains how the Internal Revenue Service (Service) provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate). This revenue procedure also amplifies Rev. Proc. 2009-3, 2009-1 I.R.B. 107, which sets forth the areas of the Internal Revenue Code (Code) under the jurisdiction of the Associate Chief Counsel (Corporate) relating to issues on which the Service will not issue letter rulings.

SECTION 3. BACKGROUND

.01 Current Procedures

Ordinarily, the Service will not issue a letter ruling on only part of an integrated transaction. Section 6.03 of Rev. Proc. 2009-1; Section 4.02(2) of Rev. Proc. 2009-3. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Where it is impossible for the Service to determine the tax consequences of a larger transaction without knowing the resolution of an issue on which the Service will not issue rulings under Rev. Proc. 2009-3, and the Service nevertheless rules on the larger transaction, then the taxpayer must state in the request to the best of the taxpayer's knowledge and belief the tax consequences of the no-rule issue. Section 2.03 of Rev. Proc. 2009-3. The Service's ruling letter will state that the Service did not consider, and no opinion is expressed upon, the no-rule issue. In appropriate cases, the Service may decline to issue rulings on such larger transactions due to the relevance of the no-rule issue, despite the taxpayer's representation.

In addition, the Service generally does not issue letter rulings with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, or authorities published in the Internal Revenue Bulletin. Section 6.11 of Rev. Proc. 2009-1 and section 4.02(9) of Rev. Proc. 2009-3. Similarly, unless the Service determines that there is a significant issue (as defined in section 3.01(38) of Rev. Proc. 2009-3), the Service will not issue a ruling on whether a transaction qualifies for nonrecognition treatment under § 332, § 351 (except for certain transfers undertaken before § 355 distributions) or § 1036. Likewise, absent a significant issue, the Service will not issue a ruling as to whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A) (including a transaction that qualifies under §

368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E) or § 368(a)(1)(F), or as to the various consequences (such as nonrecognition and basis adjustments) that arise as a result of a transaction constituting a corporate reorganization. If the Service determines that there is a significant issue, and to the extent the transaction is not described in another no-rule section, the Service will rule on the entire transaction, and not just the significant issue. Section 3.01(38) of Rev. Proc. 2009-3.

.02 New Procedures

In order to use Service resources more efficiently and to increase the availability of private letter rulings, this revenue procedure allows taxpayers to request rulings on one or more issues that: (1) are solely under the jurisdiction of the Associate Chief Counsel (Corporate), (2) are significant (as defined in section 3.01(38) of Rev. Proc. 2009-3), and (3) involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. Under this program, taxpayers may request and the Service may issue a ruling on part of a transaction rather than on the larger transaction. In addition, taxpayers may request and the Service may issue a ruling on a particular legal issue under a Code section or a section of the Income Tax Regulations (Regulations) rather than a ruling that addresses all aspects of that Code or Regulations section (or any other section). For example, the Service may rule on whether the acquisition of the assets of one corporation by another corporation meets the continuity of business enterprise requirement of § 1.368-1(d) or is described in § 355(b)(2)(C) even though the ruling does not address overall qualification of the transaction under § 368 or § 355, respectively, as long as the acquisition occurs

in the context of a § 355 distribution. Accordingly, section 6.03 of Rev. Proc. 2009-1 and sections 3.01(38) and 4.02(2) of Rev. Proc. 2009-3 are amplified to provide that the Service will issue letter rulings regarding such significant issues under the conditions specified herein.

Ruling requests under this revenue procedure must comply with the relevant requirements of any other applicable revenue procedures. See, e.g., Appendix E of Rev. Proc. 2009-1. For example, a request for a § 351 ruling on a transaction that occurs in the context of a § 355 distribution must provide all of the information required by Rev. Proc. 83-59, 1983-2 C.B. 575. However, if the request is solely for a ruling on a significant issue under § 351, the request must provide the information and representations required by Rev. Proc. 83-59 that pertain only to that significant issue. Further, where a taxpayer is requesting a ruling regarding a significant issue under a Code or Regulations section (e.g., § 368(a)(2)(C)), the taxpayer must provide a representation regarding qualification or characterization of the transaction under such Code or Regulations section (e.g., § 368(a)(1)(A)) assuming that the Service rules as requested. The Service reserves the right to rule on any other issue in, or part of, the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. Cf. section 2.01 of Rev. Proc 2009-3.

All pertinent no-rule policies governing the Service's ruling practice will govern requests for rulings made pursuant to this revenue procedure. See, for example, Rev. Proc. 2003-48, 2003-2 C.B. 86 (no-rule policy regarding business purpose and device issues under § 355, and § 355(e) plan issues). In addition, the Service will not grant a ruling on a significant non-plan issue or issues under § 355(e) unless an adverse ruling

on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e). With respect to ruling requests regarding the effect of a redemption under section 355(e), the Service will entertain such requests under the conditions described in sections 5.09 and 5.10 of this revenue procedure. Rev. Proc. 2009-3 is amplified to reflect these policies.

The Service will, if requested, endeavor to issue letter rulings requested pursuant to this revenue procedure within ten weeks from receipt of the request, provided that the request meets the requirements of sections 7.02(4) and 8.05(1) of Rev. Proc. 2009-1 as amplified by this revenue procedure.

The ruling program under this revenue procedure is a pilot program that applies to ruling requests postmarked or, if not mailed, received after May 4, 2009. This pilot program will be evaluated by the Service periodically.

SECTION 4. REQUEST FOR COMMENTS

The Service requests comments regarding the pilot program. Comments should refer to Rev. Proc. 2009-25, and should be submitted to:

Internal Revenue Service

P. O. Box 7604

Ben Franklin Station

Washington, DC 20044

Attn: CC:PA:RU

Room 5226

or electronically via the Service internet site at:

Notice.Comments@irscounsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

SECTION 5. PROCEDURE

.01 Rev. Proc. 2009-1 is amplified by adding the following paragraphs to section 6.03:

In addition, the Office of the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if the requested ruling addresses one or more issues that: (1) are under the jurisdiction of the Associate Chief Counsel (Corporate), (2) are significant (as defined in section 3.01(38) of Rev. Proc. 2009-3, this Bulletin), and (3) involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. The Service may also rule on a particular legal issue under a Code or Regulations section without ruling on all aspects of such Code or Regulations section if the issue meets the three conditions of the preceding sentence.

Before preparing the letter ruling request under this section 6.03, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at the telephone number provided in section 10.07(1)(a) of this revenue procedure for pre-submission conferences to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling under this section 6.03. The Service reserves the right to rule on any other aspect of the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. Cf. section 2.01 of Rev. Proc. 2009-3.

All requests for a ruling under this section 6.03 must contain the following:

- (1) A narrative description of the transaction that puts the issue in context;
- (2) An explanation concerning why the issue is significant within the meaning of section 3.01(38) of Rev. Proc. 2009-3;
- (3) Applicable information from relevant revenue procedures with respect to the significant issue. See Appendix E of this revenue procedure (referring to, inter alia, Rev. Proc. 96-30, 1996-1 C.B. 696, as modified and amplified by Rev. Proc. 2003-48, 2003-2 C.B. 86);
- (4) The precise ruling being requested;
- (5) Where the taxpayer is requesting a ruling on the tax treatment of part of an integrated transaction, a representation regarding the relevant tax consequences of the larger transaction (to the best knowledge and belief of the taxpayer), assuming that the Service issues the requested ruling; additionally, where the taxpayer is requesting a ruling on a particular legal issue under a Code section or section of the Regulations (e.g., § 1.368-2(k)), a representation (to the best knowledge and belief of the taxpayer) regarding qualification or characterization of the transaction under such Code or Regulations section (e.g., § 368(a)(1)(A)), assuming that the Service issues the requested ruling; and
- (6) A statement that no rulings outside the jurisdiction of the Associate Chief Counsel (Corporate) are requested.

If the Service issues a ruling on a significant issue under this procedure, then the letter ruling will state that no opinion is expressed as to the overall tax consequences of the transactions described in the letter ruling or as to any issue or step not specifically

addressed by the letter. In addition, letter rulings under this procedure will contain the following (or similar) language at the beginning of the letter:

This Office expresses no opinion as to the overall tax consequences of the transaction(s) described in this letter. Rather, the ruling(s) contained in this letter only address one or more discrete legal issues involved in the transaction.

.02 Rev. Proc. 2009-1 is amplified by replacing the last sentence of the first paragraph of section 7.02(4) with the following:

Notwithstanding the previous sentence, expedited handling may be available for certain issues under the jurisdiction of the Associate Chief Counsel (Corporate), as provided below.

.03 Rev. Proc. 2009-1 is amplified by replacing the heading and the first sentence of the seventh paragraph of section 7.02(4) with the following:

EXPEDITED LETTER RULING PROCESS FOR CERTAIN REQUESTS UNDER THE JURISDICTION OF THE ASSOCIATE CHIEF COUNSEL (CORPORATE): If a taxpayer requests a letter ruling on whether a transaction constitutes a reorganization under § 368 or a distribution under § 355, or a letter ruling involving certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure, and the taxpayer asks for expedited handling pursuant to this provision, the Service will grant expedited handling.

.04 Rev. Proc. 2009-1 is amplified by replacing the last sentence of section 7.02(4) with the following:

For further information regarding this EXPEDITED LETTER RULING PROCESS FOR CERTAIN REQUESTS UNDER THE JURISDICTION OF THE

ASSOCIATE CHIEF COUNSEL (CORPORATE), call the telephone number provided in section 10.07(1)(a) of this revenue procedure for pre-submission conferences with the Office of Associate Chief Counsel (Corporate).

.05 Rev. Proc. 2009-1 is amplified by replacing the first sentence of the last paragraph of section 8.05(1) with the following:

The Service will not endeavor to process on an expedited basis a ruling request regarding reorganizations under § 368, distributions under § 355, or certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure unless the branch representative in the Office of Associate Chief Counsel (Corporate) receives all requested additional information within 10 calendar days from the date of the request for such additional information, unless an extension of time is granted.

.06 Rev. Proc. 2009-1 is amplified by replacing the first sentence of the third paragraph of section 19 with the following:

The collections of information in this revenue procedure are in sections 5.06, 6.03, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 8.02, 8.05, 10.01, 10.06, 10.07, 11.11, 13.02, 15.02, 15.07, 15.08, 15.09, 15.11, paragraph (B)(1) of Appendix A, Appendix C, and Appendix E (subject matter—rate orders; regulatory agency; normalization).

.07 Rev. Proc. 2009-1 is amplified by replacing the second sentence of Appendix C, Item 35 with the following sentence:

Note that certain requests under the jurisdiction of the Associate Chief Counsel (Corporate) may receive expedited treatment without stating a compelling need.

.08 Rev. Proc. 2009-3 is amplified by starting a new paragraph immediately

before the last sentence of the first paragraph of section 3.01(38) and by adding the following sentences at the end of the revised first paragraph in section 3.01(38):

However, the Service may rule on a significant issue in a transaction that occurs in the context of a § 355 distribution without ruling on the entire transaction. See section 6.03 of Rev. Proc. 2009-1. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at (202) 622-7700 to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling only involving that significant issue. The Service reserves the right to rule on any other issue in the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. Cf. section 2.01 of this revenue procedure.

.09 Rev. Proc. 2009-3 is amplified by adding the following paragraph to section 3.01:

Section 355.—Distribution of Stock and Securities of a Controlled Corporation.— Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). See Rev. Proc. 2003-48, 2003-2 C.B. 86. Notwithstanding the preceding sentence, the Service may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of

a plan under § 355(e).

.10 Rev. Proc. 2009-3 is amplified by adding the following paragraph to section 4.01:

Section 355.—Distribution of Stock and Securities of a Controlled Corporation.— Any issue under § 355(e) other than whether a distribution and an acquisition are part of a plan (i.e., any non-plan issue). Notwithstanding the preceding sentence, the Service generally will rule on a non-plan issue or issues (e.g., whether a corporation constitutes a predecessor of distributing) if an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

.11 Rev. Proc. 2009-3 is amplified by adding the following paragraph to section 4.02(2):

Notwithstanding the previous paragraph, the Office of the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if such transaction occurs in the context of a § 355 distribution. See section 6.03 of Rev. Proc. 2009-1. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at (202) 622-7700 to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling only involving part of the transaction. The Service reserves the right to rule on any other part of the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. Cf. section 2.01 of this revenue procedure.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2009-1, 2009-1 I.R.B. 1, and Rev. Proc. 2009-3, 2009-1 I.R.B. 107, are amplified.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective May 4, 2009.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 5. This information is required and will be used to determine whether a taxpayer would qualify for a letter ruling on part of an integrated transaction without the Service ruling on the larger transaction. The collections of information are required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden under Rev. Proc. 2009-1 is 513,150 hours.

The estimated annual burden per respondent varies from 1 hour to 200 hours, depending on individual circumstances, with an estimated average of 90.1054 hours. The estimated number of respondents is 5,695.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue tax law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Russell P. Subin of the Office of Associate Chief Counsel (Corporate) For further information regarding this revenue procedure contact Russell P. Subin on (202)-622-7790 (not a toll free call).